



POSTAL REGULATORY COMMISSION

[Docket No. CP2012-5; Order No. 1060]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into an outstanding International Business Reply Service competitive agreement. This document invites public comments on the request and addresses several related procedural steps.

DATES: Comments are due: December 28, 2011, 4:30 p.m., Eastern Time.

ADDRESSES: Submit comments electronically by accessing the “Filing Online” link in the banner at the top of the Commission’s Web site (<http://www.prc.gov>) or by directly accessing the Commission’s Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot

submit their views electronically should contact the person identified in the FOR FURTHER INFORMATION CONTACT section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820 (case-related information) or DocketAdmins@prc.gov (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Additional Matters

III. Ordering Paragraphs

I. Introduction

On December 15, 2011, the Postal Service filed notice, pursuant to 39 CFR 3015.5, of contingency prices under an outstanding International Business Reply Service (IBRS) competitive contract.¹ The prices cover calendar year 2012 postage on certain postage-prepaid items returned from overseas locations to a U.S.-based entity. The Postal Service expects the prices to apply to an extremely small number of postal items due to the mailer's profile and the passage of time since the expiration of the contract. Id. at 4.

Supporting documentation. Attachments to the Notice include:

¹ Notice of United States Postal Service of Prices under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 15, 2011 (Notice).

- Attachment 1—a redacted copy of a notice to the customer, including enclosures consisting of a disclosure statement and price table;
- Attachment 2—the certified statement, required under Commission rules, attesting to the accuracy of supporting data and explaining why, after the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3);²
- Attachment 3—the certification of the Governors’ vote in Governors’ Decision No. 08-24, a redacted copy of the referenced Governors’ Decision, revised and redacted Mail Classification language, redacted copies of price formulas and a related analysis, and a redacted certification.
- Attachment 4—an application for non-public treatment of certain materials.

The Postal Service also provided a redacted copy of the Agreement and supporting financial documentation as an Excel file. Id. at 5.

IBRS contracts. The Commission added the parent product — International Business Reply Service Contract 1 — to the Competitive Products

² Commission rule 3015.5(c)(2) addresses the required certification. Section 3633(a)(1) includes a prohibition against the subsidization of competitive products by market dominant products. Section 3633(a)(3) includes the requirement that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.

in Order No. 178, following consideration in two baseline cases.³ The controlling Governors' Decision is No. 08-24. Id. at 1-2.

IBRS competitive contracts are for U.S.-based entities that seek a channel for returned merchandise or other articles from their overseas customers. These entities typically supply preprinted, prepaid IBRS packaging in which overseas customers can place used or defective consumer items and enter them in the mailstream at no direct cost. Id. at 1. Thus, IBRS is a return service for overseas customers. Id. at 2. The contract customer is the recipient of IBRS items, not the mailer; therefore, the customer has no control over the contingency that extraneous IBRS items might be tendered after expiration of the contract. Id. Given that costs are incurred in accepting and delivering these items, the Postal Service and its IBRS customers have agreed to let the Postal Service set prices to cover costs and potentially incentivize customers to enter into new arrangements. Id.

The Postal Service notes that the contract underlying the instant contingency prices was executed before the Commission's current rules for competitive and market dominant products took effect. Id. It says the contract expired March 31, 2008; no successor contract has been executed; and the instant prices therefore occur under a surviving contractual term. Id. at 2.

³ Docket Nos. M2009-14 and CP2009-20.

The Postal Service explains that contingency arrangements like the one presented here consist of (1) a provision in each IBRS contract to govern the contingency that a new agreement might not be concluded and approved before expiration and, in the case of this customer, (2) subsequent communication with the customer to update the contingency prices. Id.

The Postal Service has filed two notices of changes in contingency prices under the underlying expired contract: one for calendar year 2010 and the other for calendar year 2011. Id. at 3. Both notices expressed the Postal Service's view that the contingency pricing arrangement for the next calendar year was functionally equivalent to the IBRS contracts considered in Docket Nos. CP2009-20 and CP2009-22, and include a request that the Commission include each of the contingency pricing arrangements within the IBRS Competitive Contracts 1 designation on the Competitive Products List. Id. The Commission, as requested, added both contingency pricing arrangements to the Competitive Product List under the IBRS Competitive Contract 1 product. Id. at 4, n.8.

The Postal Service addresses several points about the status of the underlying contract under Commission rules, but concludes that filing materials under 39 CFR 3015.5, as it has done here, resolves any inconsistency. Id. at 4. It therefore requests the Commission to include the instant contingency arrangement within the IBRS Competitive Contract 1 designation on the Competitive Products List based on its functional equivalence to the IBRS contracts in Docket Nos. CP2009-20 and CP2009-22.

Functional equivalency. The Postal Service asserts that the instant IBRS contingency arrangement is essentially identical to those envisioned in the contracts the Commission included in the IBRS Competitive Contract 1 product in Docket Nos. CP2009-20 and CP2009-22, with minor procedural variations due to different negotiation outcomes. Id. at 5. It says the nature of the IBRS service provided in all three contracts is essentially the same, and the instant IBRS contingency arrangement bears similar market characteristics to the two other IBRS Competitive Contract 1 agreements. Id. at 5-6. The Postal Service also incorporates by reference its arguments about functional equivalence in Docket No. CP2009-22. Id. at 6.

Postal Service's position. The Postal Service maintains that, based on the reasons provided in its Notice and the financial data filed under seal, it has established that the instant contingency prices under an expired IBRS contract are in compliance with the requirements of 39 U.S.C. 3633. Id. It further asserts that the contingency arrangement is also functionally equivalent to those contemplated by the IBRS contracts filed in Docket Nos. CP2009-20 and CP2009-22. Id. The Postal Service therefore asserts that this arrangement should be added to the IBRS Competitive Contract 1 product on the Competitive Products List. Id.

II. Additional Matters

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3632 and

3633 and 39 CFR part 3015. Comments are due no later than December 28, 2011.

The public portions of the Postal Service filing can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2012-5 to consider matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public.

3. Comments by interested persons in this proceeding are due no later than December 28, 2011.

4. The Secretary shall arrange for publication of this order in the Federal Register.

By the Commission.

Shoshana M. Grove,
Secretary.

[FR Doc. 2011-33061 Filed 12/23/2011 at 8:45 am; Publication Date: 12/27/2011]